

SENATE AMENDMENTS TO SENATE BILL 311

By COMMITTEE ON COMMERCE

April 15

1 On page 1 of the printed bill, line 3, after “656.325” insert “and 656.780”.

2 In lines 9 through 14, delete the boldfaced material.

3 In line 14, after “three” insert “independent medical”.

4 In line 21, delete the first “a” and insert “an independent”.

5 In line 22, delete “Board of Medical Examiners” and insert “director”.

6 In line 23, delete “3” and insert “5”.

7 After line 23, insert:

8 “(c) The director shall adopt rules applicable to independent medical examinations conducted
9 pursuant to paragraph (a) of this subsection that:

10 “(A) Provide a worker the opportunity to request review by the director of the reasonableness
11 of the location selected for an independent medical examination. Upon receipt of the request for
12 review, the director shall conduct an expedited review of the location selected for the independent
13 medical examination and issue an order on the reasonableness of the location of the examination.
14 The director shall determine if there is substantial evidence for the objection to the location for the
15 independent medical examination based on a conclusion that the required travel is medically
16 contraindicated or other good cause establishing that the required travel is unreasonable. The de-
17 terminations of the director about the location of independent medical examinations are not subject
18 to review.

19 “(B) Impose a monetary penalty against a worker who fails to attend an independent medical
20 examination without prior notification or without justification for not attending the examination. A
21 penalty imposed under this subparagraph may be imposed only on a worker who is not receiving
22 temporary disability benefits under ORS 656.210 or 656.212. An insurer or self-insured employer may
23 offset any future compensation payable to the worker to recover any penalty imposed under this
24 subparagraph from a claim with the same insurer or self-insured employer. When a penalty is re-
25 covered from temporary disability or permanent total disability benefits, the amount recovered from
26 each payment may not exceed 25 percent of the benefit payment without prior authorization from
27 the worker.

28 “(C) Impose a sanction against a medical service provider that unreasonably fails to provide in
29 a timely manner diagnostic records required for an independent medical examination.

30 “(d) Notwithstanding ORS 656.262 (6), if the director determines that the location selected for
31 an independent medical examination is unreasonable, the insurer or self-insured employer shall ac-
32 cept or deny the claim within 90 days after the employer has notice or knowledge of the claim.”.

33 In line 24, delete “(c)” and insert “(e)”.

34 On page 2, line 2, delete “3” and insert “5”.

35 In line 5, delete “(d)” and insert “(f)”.

1 Delete lines 12 through 15 and insert:
2 “(g) A worker who objects to the location of an independent medical examination must request
3 review by the director under paragraph (c)(A) of this subsection within six business days of the date
4 the notice of the independent medical examination was mailed.”
5 On page 3, lines 12 through 17, delete the boldfaced material.
6 In line 17, after “three” insert “independent medical”.
7 In line 24, delete the first “a” and insert “an independent”.
8 In line 25, delete “Board of Medical Examiners” and insert “director”.
9 In line 26, delete “3” and insert “5”.
10 After line 26, insert:
11 “(c) The director shall adopt rules applicable to independent medical examinations conducted
12 pursuant to paragraph (a) of this subsection that:
13 “(A) Provide a worker the opportunity to request review by the director of the reasonableness
14 of the location selected for an independent examination. Upon receipt of the request for review, the
15 director shall conduct an expedited review of the location selected for the independent medical ex-
16 amination and issue an order on the reasonableness of the location of the examination. The director
17 shall determine if there is substantial evidence for the objection to the location for the independent
18 medical examination based on a conclusion that the required travel is medically contraindicated or
19 other good cause establishing that the required travel is unreasonable. The determinations of the
20 director about the location of independent medical examinations are not subject to review.
21 “(B) Impose a monetary penalty against a worker who fails to attend an independent medical
22 examination without prior notification or without justification for not attending the examination. A
23 penalty imposed under this subparagraph may be imposed only on a worker who is not receiving
24 temporary disability benefits under ORS 656.210 or 656.212. An insurer or self-insured employer may
25 offset any future compensation payable to the worker to recover any penalty imposed under this
26 subparagraph from a claim with the same insurer or self-insured employer. When a penalty is re-
27 covered from temporary disability or permanent total disability benefits, the amount recovered from
28 each payment may not exceed 25 percent of the benefit payment without prior authorization from
29 the worker.
30 “(C) Impose a sanction against a medical service provider that unreasonably fails to provide in
31 a timely manner diagnostic records required for an independent medical examination.
32 “(d) Notwithstanding ORS 656.262 (6), if the director determines that the location selected for
33 an independent medical examination is unreasonable, the insurer or self-insured employer shall ac-
34 cept or deny the claim within 90 days after the employer has notice or knowledge of the claim.”
35 In line 27, delete “(c)” and insert “(e)”.
36 In line 31, delete “3” and insert “5”.
37 In line 34, delete “(d)” and insert “(f)”.
38 Delete lines 41 through 44 and insert:
39 “(g) A worker who objects to the location of an independent medical examination must request
40 review by the director under paragraph (c)(A) of this subsection within six business days of the date
41 the notice of the independent medical examination was mailed.”
42 On page 4, after line 32, insert:
43 “**SECTION 3.** ORS 656.780 is amended to read:
44 “656.780. (1) The Director of the Department of Consumer and Business Services shall:
45 “(a) Adopt by rule standards for certification of workers’ compensation claims examiners[.] **that**

1 **shall be administered by** workers' compensation insurers, self-insured employers and third party
2 administrators [*shall administer the standards.*]; **and**

3 **“(b) Develop or approve any training curriculum used by insurers, self-insured employers**
4 **and third party administrators that is related to interactions with independent medical ex-**
5 **amination providers required under ORS 656.325.**

6 **“(2)(a)** Each insurer, self-insured employer and third party administrator shall maintain records
7 of the certification and training of their workers' compensation claims examiners. These records are
8 subject to inspection and review by the director.

9 **“(b)** The director may impose a civil penalty against any insurer, self-insured employer or third
10 party administrator that fails to:

11 **“(A)** Maintain or produce certification and training records as required by the rules of the di-
12 rector; **or**

13 **“(B) Provide training based on a curriculum approved by the director related to inter-**
14 **actions with independent medical examination providers required under ORS 656.325.**

15 **“(3)** Insurers, self-insured employers and third party administrators may employ only certified
16 workers' compensation claims examiners to process workers' compensation claims. The director may
17 impose a civil penalty against any insurer, self-insured employer or third party administrator that
18 violates this subsection.”.

19 In line 33, delete **“SECTION 3. Section 4”** and insert **“SECTION 4. Section 5”** and delete
20 **“677”** and insert **“656”**.

21 Delete lines 34 through 45 and insert:

22 **“SECTION 5.** (1) The Director of the Department of Consumer and Business Services shall
23 maintain a list of providers that are authorized to perform independent medical examinations.

24 **“(2)** A provider on the list maintained by the director under subsection (1) of this section may
25 be excluded from the list by the director after a finding of a violation of standards of professional
26 conduct for conducting independent medical examinations adopted by the appropriate health pro-
27 fessional regulatory board. If a health professional regulatory board has not adopted standards per-
28 taining to independent medical examinations, the guidelines of conduct published by the American
29 Board of Independent Medical Examiners in effect on the effective date of this 2005 Act shall apply
30 as standards pertaining to providers conducting independent medical examinations that are licensed
31 by that board. The decision of the director to exclude a provider from the list maintained under
32 subsection (1) of this section is subject to review under ORS 656.704.

33 **“(3)** The director, in consultation with the advisory committee on medical care of the Workers'
34 Compensation Division of the Department of Consumer and Business Services, the Workers' Com-
35 pensation Management-Labor Advisory Committee and affected interest groups shall develop, and
36 the director shall adopt by rule.”.

37 On page 5, line 1, delete “and ethical standards and training” and insert “licensing training re-
38 quirements and educational”.

39 In line 2, after “conducting” insert “independent”.

40 In line 4, after “about” insert “independent”.

41 In line 5, after “(1)” insert “that includes, but is not limited to, standards for referring com-
42 plaints to the appropriate health professional regulatory board and an appeals process for a physi-
43 cian who disagrees with an action taken by the director under subsection (2) of this section”.

44 After line 5, insert:

45 **“SECTION 6. Section 5 of this 2005 Act becomes operative on July 1, 2006.**

1 **“SECTION 7. The Director of the Department of Consumer and Business Services may**
2 **take any action before the operative date of section 5 of this 2005 Act that is necessary to**
3 **enable the director to exercise, on and after the operative date of section 5 of this 2005 Act,**
4 **the duties, powers and functions conferred on the director by this 2005 Act.**

5 **“SECTION 8. The amendments to ORS 656.325 and 656.780 by sections 1, 2 and 3 this 2005**
6 **Act apply to all claims in which an independent medical examination required under ORS**
7 **656.325 is scheduled on or after the effective date of this 2005 Act.”.**

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